SAVING HUMANITY DEMOCRATICALLY?

FROM IMPACT REFUGEES TO DETERRITORIALIZED STATES: DEEPING THE EXTREME LEGAL AND POLICY CASES

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Abstract

It has been regulated situations where populations have had to cross national borders to seek safety in nearby countries. The reasons for displacement have been generated by internal human causes, but the exposure to unexpected extra-terrestrial factors poses a different scenario. An asteroid impact warning implies a change of paradigm which will represent a historic precedent. In this regard, it should be considered the prerequisites for an asteroid's orbit correction, the multiple possible scenarios and some legal aspects related to: a) the legal framework to regulate this situation, the action and responsibility of the States; c) the redefinition and configuration of traditional concepts as impact refugee or deterritorialized States. Besides, the decision-making process and the actors in it must be specified. These new circumstances must be faced keeping in mind the inequalities between States and the aim of protecting humanity from democratic solutions with the safest techniques. All in all, the scientific-technological level will have a decisive influence on the legal framework.

Methodology

The research perspective employed will be eminently legal, based on a methodology that includes bibliographic research and the analysis of international regulations, especially Space Law.

The legal approach allows for a complex and substantive analysis of legal and procedural issues to assess the feasibility of proposals. Geopolitical interests, human rights conventions and democratic standards have been tacked in the development of this exercise in political fiction on legal grounds.

Collisional threat context

What would happen if there was an asteroid impact warning? The hypothetical collision would result in the destruction of the area with devastating consequences implies a change of paradigm which would represent a historic precedent. A collisional threat context requires considering two elements:

Collaboration. International cooperation is the best mechanism to deal with cross-border problems. The asteroid deflection proposal needs to be implemented from international coordination and networking [1]. Given that are facing a problem for which only several states and non-governmental bodies will have the capacity to respond, but whose action will be of widespread benefit, we refer to partnership for solidarity. The technology of a few is to be put at the service of humanity.

Uncertainty. Since the exact area affected will not be perfectly known beforehand, the traditional state of affairs will change: it will be difficult to predict the affected area far enough in advance to discuss alternatives and the state of science and advances in technology will lead to a modification of the legal framework. If technological developments increase the possibilities of anticipating a collision, planetary defence methods for asteroids are refined in such a way as to expand the possibilities of response, the political-legal scenario changes.

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Hypothetical scenarios

The examples suggested are also possible and imaginative to generate a theoretical-practical framework for the configuration of a body of regulations.

1. Asteroid warning produces a global migration phenomenon to low risk or not affected regions. Depending on the size and lead time, we could be thinking of a global evacuation to the opposite side of the earth.
2. The asteroid is not completed deflected and it impacts in a third State different from the initially estimated. This would be the case where the United States deflects the asteroid after 5 years, United Kingdom deflects it after three years and it finally collides with the Atlantic Ocean causing a tsunami off the Portuguese coast.
3. One of the entities leading the mission refuses to deflect the asteroid or the nation, which is going to be affected, do not permit to use of planetary defence methods due to religious or cultural matters. The debate then arises about the extent of state sovereignty and about the non-existent obligation of States to assist other States [2].
4. A State employs a dangerous and questionable technique that could generate greater prejudice [3]. This could be the use of a Nuclear Explosive Device. Any failure to use them or the generation of multiple asteroid fragments could have devastating effects.
5. A successful asteroid deflection (or at least postponed). This would be the optimal outcome and would allow for an improved action plan as long as it respects international law. The asteroid may be successfully deflected but in violation of the norm. This case should be justified by the triple canon of distress, necessity and consent [2].

Legal link

Generally, society and its demands precede the law so that the rules respond to its needs. However, in this area, science and law must anticipate.

The legal framework is composed of five main instruments ratified by the majority of States. They cover issues concerning the obligation to inform and to act, the legality of planetary defence methods, the responsibility and liability regime and related aspects such as space debris and the role of non-governmental entities [2].

Many of the questions about a NEO impact threat have been resolved. However, the little time to make decisions and take action would make desirable to formalise as much as possible and to reach prior binding agreements broad enough to generate consensus and to adapt to the concrete circumstances of the possible collision. The more detailed the space activity, the greater the legal certainty for states and citizens. This is particularly relevant when actions may entail state responsibility and there is a real peril to people's lives.

Even though these are strictly political aspects, they should not be separated. It must be determined which institution will take the decision and which will be the process. Will be the States with technological capabilities, the UN Security Council or a specific institution created ad hoc? Will the referendum be a valid instrument? In that case, which population would be participating, what would the consultation be about, how would the question be formulated, would there be time to do it?

Policymakers and legislators must assume that their anticipatory actions should be taken from the standpoint of international law and with the safest techniques. Emphasis should be placed on the development of democratic solutions to protect humanity from an asteroid impact.

Impact Refugees and Deterritorialized States

A novel question in this simulation exercise is the creation of an impact refugee or PHA refugee. The non-existent and controversial "climate change refugee" is taken as a benchmark. Several aspects need to be addressed to configure them: (1) the reason for migration; (2) the period of migration; (3) the migration's dimension in the sense that if it implies transboundary movement or not [4].

There is a crucial difference between the climate refugee and the impact refugee. Climate change impacts are broadly predictable, NEO impacts not. An organised response to climate change can be planned and decisions can be taken now to avoid extreme weather. In contrast, the planetary defence strategy will always have a margin of uncertainty in terms of emergency response [4].

The remote possibility of a state disappearing completely or becoming uninhabitable, with the consequent large-scale migration, involves an effort of conceptual flexibility to re-think the modern nation-state system and to redefine essential elements such as citizenship and state sovereign authority [5]. Could be recognized deterritorialized States? Underlying this potential reality is the concept of Ex-situ nationhood.

Two caveats related to the actors involved in planetary defence should be highlighted: (1) the risk of militarisation and Western meddling in the domestic politics [6]; (2) the overlapping roles of the five permanent members of the UN Security Council because they are who have the technological capacity and simultaneously have the right to veto.

Conclusions

1. We are faced with an exercise in simulation, in political fiction, which breaks with the traditional schemes according to which society precedes the law.
2. Cooperation and uncertainty are the premises for the design of the planetary defence strategy.
3. The obligation to protect rests with each state, but only a few will have sufficient technological capacity (including non-governmental actors) to try to avoid the collision.
4. A normative framework must be sought that defines responsibility and liability as a guarantor of human rights.
5. The concentration of power cannot jeopardise the survival of a part of humanity.
6. The decision-making process must meet democratic standards and seek the protection of the entire population without the distortion of geostrategic and ideological interests.

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